



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO FORK UNION MILITARY ACADEMY FOR FORK UNION MILITARY ACADEMY STP VPDES Permit No. VA0024147

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Fork Union Military Academy, regarding the Fork Union Military Academy STP, for the purpose of resolving certain violations of the State Water Control Law and the Permit, and applicable regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b)/303(d) report" means the report required by Sections 305(b) and 303(d) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "DMR" means Discharge Monitoring Report.
8. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. "FUMA" means Fork Union Military Academy, a corporation authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. FUMA is a "person" within the meaning of Va. Code § 62.1-44.3.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Permit" means VPDES Permit No. VA0024147, which was issued under the State Water Control Law and the Regulation to FUMA on July 1, 2012 and which expired on June 30, 2017 and was administratively continued on July 1, 2017.
13. "Plant" means the Fork Union Military Academy sewage treatment plant located at 765 Academy Road in Fork Union, Virginia, that treats and discharges treated effluent from FUMA's dormitories, staff housing, dining hall, and motor lodge with restaurant under VPDES Permit No. VA0024147.

14. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water...
9 VAC 25-31-10.
15. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
16. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
18. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.
Va. Code § 62.1-44.3.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.
21. "VPDES" means Virginia Pollutant Discharge Elimination System.
22. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. FUMA owns and operates the Plant. The Permit allows FUMA to discharge treated wastewater from the Plant, to North Creek, in compliance with the terms and conditions of the Permit.

2. North Creek is located in the James River Basin and is listed in DEQ's 305(b)/303(d) report as impaired for Aquatic Life. Sources of pollution are listed as Municipal Point Source Discharges. The Plant was included in the Benthic Total Maximum Daily Load (TMDL) Development for the North Creek Watershed, approved by the U.S. Environmental Protection Agency on February 4, 2015.
3. In submitting its DMRs, as required by the Permit, FUMA has a history of exceeding the discharge limitation contained in Part I.A.1 of the Permit for total recoverable copper (copper). Violations have occurred consistently since 2010. DEQ issued multiple Warning Letters and Notices of Violation throughout 2013 and 2014 to FUMA for the violations.
4. In response, on July 8, 2015, FUMA entered into a Letter of Agreement (LOA) with DEQ that established a schedule for FUMA to install a chemical feed system to treat Plant effluent with Remotox, a calcium polysulfide solution that, during pilot testing, offered promising results in reducing copper. According to the LOA, by July 1, 2016 FUMA would complete a final report to DEQ on the effectiveness of the chemical feed system and submit an alternate plan and schedule if sufficient pollutant reduction was not achieved.
5. On July 8, 2016, the LOA expired. No documentation of analysis or final report analyzing the effectiveness of the system and no alternative plan or schedule was received by DEQ.
6. On September 16, 2016, DEQ issued Notice of Violation No. W2016-09-V-0001 for exceedance of discharge limits for copper for the following months: July 2015, January 2016, February 2016, March 2016, and August 2016. The NOV also cited exceedances of the discharge limits for total recoverable zinc in December 2015, carbonaceous biological oxygen demand (CBOD₅) in February 2016, and dissolved oxygen in July 2016 and August 2016. An additional exceedance of the discharge limits for dissolved oxygen was reported in September 2016. Although no cause for the zinc or CBOD₅ exceedances was identified, there have been no additional violations of the discharge limits for these two parameters to the present. To address the dissolved oxygen exceedances, FUMA added a post aeration pump and modified the aeration steps and piping, and there have been no additional violations of this parameter to the present.
7. DEQ staff met with FUMA on November 17, 2016 to discuss FUMA's efforts towards achieving compliance with the copper discharge limitation. FUMA advised that the previous attempt to use Remotox to reduce copper levels was not successful and that the Academy has since procured new consultant services to continue investigation and resolution of the issue.
8. The DMR for November 2016 submitted by FUMA indicated an exceedance of the discharge limits for copper and for maximum total suspended solids (TSS) for that month. The accompanying letter of explanation indicated that the TSS exceedance was due to problems with the sequencing batch reactor decanting process. A faulty air release

solenoid on the siphon decanter and a faulty effluent discharge valve were replaced and there have been no additional violations of this parameter to the present.

9. DEQ staff met with FUMA and FUMA's consultant representatives on December 22, 2016 to continue discussions on FUMA's progress towards identifying a solution to achieve durable compliance with the copper discharge limitation. Several operational recommendations were discussed, but no conclusive cause or proposed remedy was presented by FUMA.
10. The DMR for January 2017 submitted by FUMA indicated an exceedance of the discharge limits for copper for that month.
11. The DMR for April 2017 submitted by FUMA indicated an exceedance of the discharge limits for copper for that month.
12. The DMR for June 2017 submitted by FUMA indicated an exceedance of the discharge limits for copper for that month.
13. On June 29, 2017, FUMA responded to the Notice of Violation by submitting a 2-tiered corrective action plan and interim compliance schedule to consistently avoid exceedances of the discharge limits for copper. The plan and schedule are incorporated in Appendix A of the Order.
14. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
15. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
16. The Department has issued no permits or certificates to FUMA for wastewater discharges other than VPDES Permit No. VA0024147.
17. North Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
18. Based on the results of the November 17, 2016 and December 22, 2016 meetings, the Permit-required DMRs submitted by FUMA through June 2017, and the documentation submitted by FUMA on June 29, 2017, the Board concludes that FUMA has violated Va. Code §62.1-44.5, 9 VAC 25-31-50, and the Permit, by discharging wastewater from the Plant while concurrently failing to comply with the conditions of the Permit, as described in Section C above.

19. In order for FUMA to return to compliance, DEQ staff and representatives of FUMA have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order, and the interim effluent limit as incorporated in Appendix B of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders FUMA, and FUMA agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$8,664 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
Within 30 days of the effective date of the Order	\$2,166 or balance
May 10, 2018	\$2,166 or balance
January 10, 2019	\$2,166 or balance
March 10, 2019	\$2,166 or balance

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

FUMA shall include its Federal Employer Identification Number (FEIN) with the civil charge payment **and** shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, FUMA shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of FUMA for good cause shown by FUMA, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any

action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, FUMA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. FUMA consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. FUMA declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by FUMA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. FUMA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. FUMA shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. FUMA shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

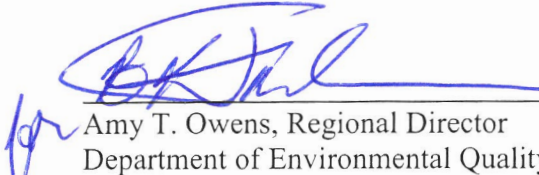
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and FUMA. Nevertheless, FUMA agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. the Director or his designee terminates the Order after FUMA has completed all of the requirements of the Order;
 - b. FUMA petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to FUMA.

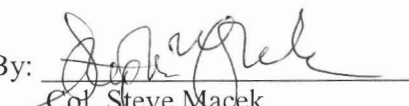
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve FUMA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by FUMA and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of FUMA certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind FUMA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of FUMA.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, FUMA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 3rd day of January, ~~2017~~ 2018

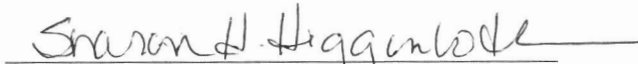

for Amy T. Owens, Regional Director
Department of Environmental Quality

Fork Union Military Academy voluntarily agrees to the issuance of this Order.

Date: 11-2-17 By: , VPO
Col. Steve Macek Vice President for Operations
Fork Union Military Academy

Commonwealth of Virginia
City/County of Fluvanna

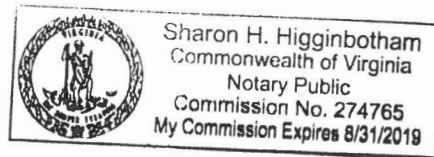
The foregoing document was signed and acknowledged before me this 2 day of
November, 2017, by Col. Steve Macek who is
Vice President for Operations of Fork Union Military Academy, on behalf of the Academy.


Notary Public

274765
Registration No.

My commission expires: Aug 31, 2019

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

Plant Upgrades

1. **By May 31, 2018**, FUMA shall complete its study of options to reduce the copper concentrations in its Plant discharges below final permit limits. The study will evaluate two primary alternatives:
 - A. Installation of chemical treatment to the existing treatment trains; or
 - B. Construction of additional treatment processes such as tertiary flocculation and clarification, membrane filtration, potable water pretreatment, or replacement of FUMA's copper plumbing materials.
2. **By June 30, 2018**, FUMA shall submit to DEQ for review and approval the study's recommendations for the Plant upgrades. FUMA shall address any comments by DEQ within 15 days of receipt of written comments.
3. FUMA shall complete the final design plans and specifications for the selected Plant upgrades and submit to DEQ a Certificate to Construct ("CTC") application for approval as follows:
 - A. **By October 1, 2018**, if the selected Plant upgrade is installation of chemical treatment to the existing treatment trains, or
 - B. **By January 30, 2019**, if the selected Plant upgrade is construction of additional treatment processes.
4. FUMA shall complete construction of the Plant upgrade, obtain a CTO, and update the Plant's O&M Manual to incorporate operation and maintenance procedures for the new treatment units as follows:
 - A. **By July 1, 2019**, if the selected Plant upgrade is installation of chemical treatment to the existing treatment trains; or
 - B. **By July 31, 2020**, if the selected Plant upgrade is construction of additional treatment processes.

General Requirements

5. FUMA shall submit quarterly progress reports to DEQ, with the first report being due **October 10, 2017**. Subsequent progress reports will be due **January 10, April 10, and July 10**, along with the Plant's Discharge Monitoring Report until the cancellation of this Order. The quarterly progress reports shall contain:

- a. a summary of all work completed since the previous progress report in accordance with this Order;
 - b. a projection of the work to be completed during the upcoming quarterly period in accordance with this Order; and
 - c. a statement regarding any anticipated problems in complying with this Order.
6. No later than **14 days** following a date identified in the above schedule of compliance FUMA shall submit to DEQ's Valley Regional Office a written notice of compliance or noncompliance with the scheduled item. In the case of noncompliance, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled item.
7. **DEQ Contact**

Unless otherwise specified in this Order, FUMA shall submit all requirements of Appendix A of this Order to:

Tamara Ambler
Enforcement Specialist Senior
VA DEQ – Valley Regional Office
P.O. Box 3000
Harrisonburg, VA 22801
(540) 574-7896 Phone; (540) 574-7878 Fax
tamara.ambler@deq.virginia.gov

APPENDIX B
INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

From the effective date of this Order until completion of the corrective action requirements contained in Appendix A, but in no event later than July 31, 2020, FUMA shall monitor and limit the discharge from Outfall No. 002 of the Fork Union Military Academy STP in accordance with VPDES Permit Number VA0024147, except as specified below.

<u>EFFLUENT CHARACTERISTICS</u>	<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Frequency</u>	<u>Sample Type</u>
Copper, Total Recoverable (UG/L)	31	31	NA	NA	1/Month	4-hour composite